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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 579

DIONYSIA E. TSERIONI AND POLYTIME ANTONOPULO, DAUGHTERS OF GEORGE D. PAPAVASILOPULO, DECEASED, ET AL.,

Petitioners,

vs.

THE UNITED STATES.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CLAIMS AND BRIEF IN SUPPORT THEREOF.

DAVID STECKLER,
Counsel for Petitioners.

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Petitioners,

vs.

THE UNITED STATES.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CLAIMS.

To the Honorable, the Supreme Court of the United States:

The petition of the above named petitioners, respectfully shows:

1. They are all adults, and aliens, and reside in, and are nationals of, the Kingdom of Greece.

2. This petition seeks a review of a decision of the Court of Claims of the United States, sustaining a demurrer to

their petition filed in that court for the recovery of $19,-603.34, the amount of certain checks issued by the Collector of the Port of New York to one, Eustadio D. Papavasilopulo, in payment of refunds of duties assessed upon duty-free imported goods. An order was made dismissing said petition (R. 14). Eustadio D. Papavasilopulo died October 16, 1918. Petitioners are his next of kin.

3. The ground of the decision was that the six year statute of limitation barred the cause of action in that it accrued more than six years after the expiration of thirty days from the dates of the liquidation of the entries in the Custom House (U. S. Code, Sec. 262, Title 28). The decision of the Court of Claims was filed June 2, 1941, and is reported in Case No. 45,214 (92 Ct. Cls. 93).

Statement.

4. The petition below alleged that petitioners were entitled to recover the sum of $19,603.34 refunds of duties illegally assessed upon importations; and that the authority for the claim was Section 21 of Ch. 391 of the Act of June 22, 1874 (18 U. S. Stat. 190); and Ch. 407 of the Act of June 10, 1890 (26 U. S. Stat. 131) (R. 1-2).

5. The petition further alleged that the intestate was an importer of goods, and during the years 1905 to 1909 inclusive, made certain importations at the Port of New York, indicated in the entry papers set forth in the petition, and amounts of refunds to which he became entitled; further that there was erroneously assessed against the said merchandise duties under the then existing Tariff Act, and in order to obtain the release thereof the intestate paid the duties aforesaid (R. 2-5).

6. The petitioners further alleged that prior to liquidation of the entries, the Board of General Appraisers, which had jurisdiction of the review of duties assessed by the

collector, made a determination that the goods were duty free, and the intestate was entitled to a refund of the duties so paid (R. 3-4).

7. The petition further alleged that thereafter the Collector drew checks to the order of the intestate to pay said refunds, dated, numbered, and in amounts set forth in the petition (R. 4); that owing to the importer's death and the fact that the petitioners were beyond the seas, no one was present in the United States to receive the same; and that the Collector transmitted them to the Comptroller General, as an outstanding liability of the defendant (R. 4).

8. The petition further alleged that notwithstanding the issuance of said checks, the Comptroller General on October 13, 1936, directed that said liability be used as an offset in partial liquidation of a claim for loss of revenue claimed to be due to the defendant from the intestate, with compound interest at 6% per annum, which direction and application were without legal right in law or in fact (R. 5-6).

Questions Presented.

9. The questions presented are:

(a) Whether the six year statute of limitations barring prosecution of claims against the United States in the Court of Claims, is applicable to this case.

(b) Whether the deposits were not held by the defendant in the nature of a trust for the benefit of the importer, or as a bailment.

(c) Whether the moneys deposited by the intestate with the Collector, and by him transmitted to the Comptroller General to be placed in the account of outstanding liabilities, were not held in trust, or as a bailment, for intestate's benefit.

(d) Whether the moneys deposited with the Collector were not illegally exacted by the Collector on the representation that the goods were dutiable, and whether as to such deposits the defendant did not stand in the relation of a trustee or bailee.

(e) Whether in exacting deposits to cover estimated duties upon non-dutiable goods the defendant had not received the same in a fiduciary relationship, or as bailee.

(f) Whether the statute of limitations did not begin to run from the date when demand for the return of the deposits was made and refused.

(g) Whether moneys deposited by an importer to cover alleged duties upon duty free goods for which the Collector, in the performance of an administrative duty and as a disbursing officer of the Secretary of the Treasury has issued checks to pay a refund of such duties, which checks were held in the account of outstanding liabilities of the defendant under Sections 149, 150 and 151 of Title 31 of the United States Code, may not be recovered within six years after demand for payment is made and refused.

(h) Whether in applying said moneys in outstanding liabilities to an alleged indebtedness of the intestate to defendant, with compound interest, upon which no suit had been brought, the Comptroller General did not violate Ch. 149, Act of March 3, 1875, as amended, and whether such act was not illegal and void.

Reasons for Allowance of the Writ.

10. The reasons relied on for allowance of the writ are as follows:

(a) The Tariff Act in force at the time provided that moneys deposited with the Collector were to insure payment of the duties as a condition of release of the goods, which were duty free, as was determined by the Board of General Appraisers. Pursuant to statute Congress appropri-

ated annually a fund for the refund of such duties. Checks were drawn by the Collector to pay same, and the moneys represented thereby were thereafter deposited in the account of outstanding liabilities to the credit of the intestate. The moneys were, therefore, earmarked as belonging to the intestate, and remained on deposit in the Treasury in the same manner as if the moneys had been deposited in a bank, or as the Government holds principal and interest on its bonds and other obligations, and moneys in the Registry of the Court. A trust relationship or bailment existed which imposed upon defendant the duty to pay upon demand. The statute of limitations did not begin to run until demand for payment and refusal. The petition shows that the demand for payment was refused on October 13, 1936, and suit was brought within six years from that date.

(b) The question here presented is of public concern, for the reason that importers of merchandise should know whether when they make deposits with a collector for estimated duty upon duty free goods, the money is not available to the depositor on demand.

(c) Importers should know whether money in the account of outstanding liabilities received under the circumstances of this case must not be returned on demand.

(d) The precise question here presented has never been passed on by this Court.

(e) The decision of the Court of Claims is in direct conflict with the rule of law stated by the Court in *Marriott* v. *Brune*, Fed. Cases 2052; *Taney*, 132, affirmed by this Court in 50 U. S. (9 How.) 619, which held that estimated duties are in the nature of a deposit, or pledge; and in conflict with *United States* v. *Wardwell*, 172 U. S. 48, and other decisions of this Court.

(f) The court below has interpreted the Customs Administrative Law of 1890 with respect to the payment of refunds of duties deposited upon duty free importations,

contrary to the spirit and intent of the statute, in holding that checks issued for such refunds checked out by the Collector against funds in the treasury and deposited by the Comptroller General in the account of outstanding liabilities, are barred by the six-year statute of limitations (Sec. 262 of Title 28 of the United States Code, being Sec. 156 of the Judicial Code).

WHEREFORE, petitioners pray that a writ of certiorari may be issued out of, and under the seal of this Court, directed to the Court of Claims of the United States, commanding that court to certify and send to this Court, on a day certain to be designated therein, a full and complete transcript of the record of all proceedings of the said court in this cause, to the end that the same may be reviewed and determined in this Court; and that the final order of the said court, and every part thereof, may be reviewed and corrected by this Court in conformity with the Constitution and laws of the United States; and that the said final order may be reversed and the demurrer overruled, and judgment ordered for the petitioners; and that the petitioners have such other and further relief as to this Court may seem just and proper; and petitioners will ever pray.

Dated, New York, N. Y., August 26th, 1941.

DIONYSIA E. TSERIONI and POLYTIME ANTONOPULO, Daughters of George D. Papavasilopulo, Deceased; ANGELICA PAPAVASILOPULO, Widow of John D. Papavasilopulo, and DIONYSIUS PAPAVASILOPULO and EUSTADIO PAPAVASILOPULO, Sons of Said John D. Papavasilopulo; and DIONYSIUS N. TAMVAKIS, a Son of Athena Tamvakis,
Petitioners,

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